

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Transfer of ownership and control of a cable television franchise from Florida Communications Partners LLC, d/b/a Heathrow Cable to Bright House Networks, LLC.

DEPARTMENT: Community Information **DIVISION:** Cable Franchising

AUTHORIZED BY: Patti Michel **CONTACT:** Matt Chesler **EXT.** 1170

Agenda Date 10-26-04 **Regular** ☒ **Consent** ☐ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Staff is recommending the Board of County Commissioners adopt the attached resolution approving the transfer of control of the non-exclusive franchise from Florida Communications Partners LLC, d/b/a Heathrow Cable to Bright House Networks, LLC.

BACKGROUND:






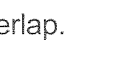
On August 12, 2004 Bright House Networks, LLC entered into an asset purchase agreement to purchase the cable television system owned by Florida Communications Partners LLC, d/b/a Heathrow Cable, which currently serves the Heathrow area of Seminole County. The transaction is expected to close on October 31, 2004. Both the seller and the purchaser hold cable television franchises in Seminole County.

Section 55 of the Seminole County Code requires prior approval of the County in the case of transfer of ownership or control of a franchise. The required "FCC 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" has been received including the required \$3,000 franchise transfer fee.

After closing the transaction, Bright House Networks intends to upgrade the acquired system and integrate it into their current system serving Seminole County and provide their full suite of services to the residents of the Heathrow area. Bright House will operate the system under the terms of their current franchise agreement with Seminole County.

After conducting an evaluation of the information provided, staff has reached the following conclusions:

1. The application for transfer of the franchises is complete.
2. The seller and purchaser are currently in compliance with their franchises.
3. Bright House Networks has the prior experience, technical, legal and financial ability to operate the cable system.
4. There will not be a negative impact on the degree of competition in the County since the current service areas of the two companies do not overlap.

Reviewed by:	
Co Atty:	
DFS:	
Other:	
DCM:	
CM:	
File No.	

2251 Lucien Way
Suite 320
Maitland, FL 32751

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Fax 407-215-5536

Diane Pickett Culpepper
Vice President
Public Affairs & Government Relations



September 10, 2004
VIA COURIER

Mr. Matt Chesler
Cable Franchising Program Manager
Seminole County
150 Bush Boulevard
Sanford, FL 32773

Re: Bright House Networks Acquisition of Heathrow Cable

Dear Matt:

I am pleased to advise you that Bright House Networks, LLC is acquiring the Florida Communications Partners, LLC, dba Heathrow Cable, cable system in Seminole County. We are looking forward to working with you on the transfer and are available should you have any questions. If the closing conditions are met, we expect the transaction to close on October 31, 2004.

We have enclosed materials regarding the transaction. If you believe your consent is necessary, we have provided copies of Federal Communications Commission's (FCC) Form 394. We request that any required action be placed on the Commission Agenda for consideration at your earliest convenience.

After closing, Bright House Networks will upgrade the acquired system and integrate it into our system serving Seminole County in order to provide our full suite of services to the residents of the Heathrow area. Bright House Networks will operate the system under our current franchise agreement with Seminole County.

I am available to meet with you or you may call me directly on 407-215-5520 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane", written in dark ink.

Diane Pickett Culpepper

Enclosures: FCC Form 394 and Exhibits
Check \$3,0000

cc: Michel Champagne, Bright House Networks
Steve Luba, Bright House Networks
Steven Gerber



September 8, 2004

Mr. Matt Chesler
Seminole County Cable Franchising Program Manager
1101 East First Street
Sanford, FL 32771-1468

**Re: Cable Television Franchise ("Franchise") granted to Florida
Communications Partners LLC by Seminole County, Florida**

Dear Matt:

Thank you for meeting with Diane Pickett Culpepper, Mike Underwood and me on August 26, 2004. As you know, Florida Communications Partners LLC ("FCP") and Bright House Networks, LLC ("Bright House Networks") have entered into an agreement pursuant to which Bright House Networks has agreed to purchase from FCP the cable television system (the "System") and other assets owned by FCP serving the residents of the Heathrow Development in Seminole County.

The relationship with Seminole County and the residents of Heathrow Development is one that FCP has valued greatly through the years. Nevertheless, we are confident that a company such as Bright House Networks, with its reputation for customer service and commitment to the industry, will be able to continue to serve the community in a way in which both you and Bright House Networks can be proud.

The purpose of this letter is to request Seminole County's consent, should you conclude that consent is required under the Franchise, to the transfer of the assets of the System from FCP to Bright House Networks, effective as of the date of consummation of FCP's transfer of the System to Bright House Networks. After such date, Bright House Networks will operate the System in accordance with the terms of its current cable franchise granted by Seminole County.

We have enclosed an executed original of the Federal Communications Commission Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" (along with two copies) whereby we are requesting your approval of the transfer of the assets of the System from FCP to Bright House Networks. As I understand it, federal law governs the transfer of a cable television franchise or its assets, in the event that you conclude Seminole County approval is necessary.

This FCC Form 394 with supporting exhibits and documents provides you with the pertinent information about the transaction and the companies involved. The transaction is scheduled to occur October 31, 2004 (assuming all closing conditions are met or waived), so your prompt action, should you choose to take any on this matter, would be greatly appreciated.

1275 LAKE HEATHROW LANE
HEATHROW, FLORIDA 32746
TEL 407.333.1000 EXT. 49
FAX 407.333.2510
E-MAIL info@flacomm.com

I am available to answer any questions or provide any additional information. Please feel free to contact me at (407) 333-1780, ext 49. Thank you for your cooperation in ensuring a smooth transition. We have enjoyed working with you to serve the residents of Seminole County.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Roy". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Robert R. Roy
President

Enclosures

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA APPROVING THE TRANSFER OF THE SEMINOLE COUNTY CABLE TELEVISION FRANCHISE FROM FLORIDA COMMUNICATIONS PARTNERS LLC TO BRIGHT HOUSE NETWORKS, LLC, MAKING CERTAIN FINDINGS OF FACT IN CONNECTION THEREWITH, IMPOSING CERTAIN CONDITIONS AS PART OF SAID APPROVAL AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Communications Partners, LLC d/b/a Heathrow Cable (the "Transferor") is duly authorized to operate and maintain a cable television system in the unincorporated area of Seminole County, Florida generally known as Heathrow and immediately surrounding area, pursuant to a non-exclusive franchise heretofore granted to Transferor's predecessors in interest and transferred by Seminole County to Transferor (the "Heathrow Cable Franchise"); and

WHEREAS, Bright House Networks, LLC ("Transferee" or "Bright House") has a non-exclusive cable television franchise for the unincorporated areas of Seminole County, which franchise is now awaiting approval of Bright House's application for renewal thereof; and

WHEREAS, Transferor and Transferee have entered into that certain "Asset Purchase Agreement" dated August 12, 2004 (the "Purchase Agreement") wherein Bright House shall acquire substantially all of Heathrow Cable's assets and commence providing its full range of cable television and related services to the Heathrow community (the "Transaction"); and

WHEREAS, the Transaction is structured so as to provide for Transferee's continued operation within Transferor's service area

under the terms and conditions of Transferee's own non-exclusive franchise instead of bifurcating its franchise responsibilities by operating under the actual, separate franchise agreement between Seminole County and Heathrow Cable itself; and

WHEREAS, Section 55.03, Seminole County Code defines "Transfer of a Franchise" to mean any transaction in which an ownership or other interest in a franchise or a cable system is transferred from one person or group of persons to another person or group of persons; and

WHEREAS, Section 55.27 of the Seminole County Code requires the submission of detailed information by applicants seeking a transfer, that the Board of County Commissioners make certain findings of fact and for mandating Transferee's compliance with certain terms and conditions in connection with approval of any franchise transfer; and

WHEREAS, Transferee has heretofore submitted its "FCC 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" and such additional financial and management information (collectively called "Application") as requested by County staff, as required by 47 U.S.C.A. § 537 and Section 55.27, Seminole County Code, as currently in effect on the adoption date of this Resolution; and

WHEREAS, Transferee has heretofore paid the required application for transfer fee of THREE THOUSAND and NO/100 DOLLARS (\$3,000.00) as required by Section 55.09(i)(3) of the Seminole County Code:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, THAT:

(1) The above recitals are true and correct and form a material part of this Resolution upon which the County, Transferor and Transferee have relied.

(2) The Board, upon reliance of staff's analysis and summary presentation of the legal, financial and technical information submitted by Transferee, hereby finds and determines it to be in the best interest of the citizens in the unincorporated areas of Seminole County that the requested franchise transfer be granted to Transferee for the remaining term of Transferee's present franchise.

(3) Nothing contained in the Purchase Agreement or the Transaction shall be interpreted or applied in any manner so as to abrogate or diminish any of the provisions of Chapter 55, Seminole County Code, any amendments thereto, and any provisions of a successor ordinance lawfully enacted. As a condition of approval of this franchise transfer, Transferee shall abide by and conform with all the provisions of Chapter 55, Seminole County Code in effect as of the adoption date of this Resolution, any and all subsequent amendments thereto and any lawfully enacted successor ordinance governing cable television franchises in Seminole County, Florida. Evidence of such intent shall be furnished by Transferee in writing to the County by the Transaction closing date or within ten (10) days of the adoption of this Resolution, whichever is earlier.

(4) In the event of a County audit of Transferor's or Transferee's books and records, conducted before or after the closing of the Transaction, reveals that franchise fees are owing for any period prior to the State's enactment of the Communications Services

Tax, both the Transferor, its successor, receiver, or assignee, and Transferee, its successor, receiver, or assignee shall be jointly and severally liable for the full payment of any such fees that may be found due and owing to the County.

(5) Pursuant to Section 55.27(e), Seminole County Code, Transferee shall assume all obligations and liabilities under Transferor's Franchise including, without limitation, all obligations of Transferor, if any, as are currently required to have been performed but may not have been performed to the extent such obligations are not inconsistent with Transferee's own franchise. The foregoing notwithstanding, the obligations, terms and conditions of Transferee's own franchise shall continue in full force and effect and shall be deemed to govern Transferee's franchise activities within Transferor's service area on the same basis as applied to all other portions of Transferee's service area within the County. Evidence of such intent to comply with the terms of this section shall be furnished by Transferee in writing to the County by the Transaction closing date or within ten (10) days of the adoption of this Resolution, whichever is earlier.

(6) Nothing herein shall be construed as extending the expiration date of the current Franchise or as granting any conditional or advance approval of any renewal of the Franchise in favor of the Transferee.

(7) Neither the County's consent to transfer of the Franchise, pursuant to the Transaction, nor the completion of the Transaction, shall in any way diminish or otherwise adversely affect any right that

the County has, may have, or may at any time or in any manner, subsequently acquire with respect to any matter and shall not diminish or otherwise adversely affect any right the County would have had with respect to any matter, including but not limited to, any renewal of the Franchise, or the County's right to consider pre-Transaction breaches in any renewal, any right of the County to compensation or other remedies in respect to alleged prior breaches of the Franchise, or any other prior commitment made with respect to performance under the Franchise, had the Transaction or the County's consent to the transfer of the Franchise pursuant to the Transaction never occurred.

(8) The transfer of franchise is hereby APPROVED by the County, subject to Transferor and Transferee obtaining all other required Federal and State of Florida regulatory approvals necessary for the Transaction and this transfer.

(9) Provided all other required Federal and State of Florida regulatory approvals have been obtained, this Resolution shall be deemed effective for the purposes of the transfer upon the closing of the Transaction. Transferor and Transferee shall provide written notification to the County immediately upon such closing.

ADOPTED this _____ day of _____, 2004.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida

By: _____
Chairman